No. 61

IN THE

Supreme Court of the United States

October Term, 1968

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JOSEPH T. STRONG, d/b/a STRONG ROOFING AND INSULATING COMPANY

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR JOSEPH T. STRONG

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OPINIONS BELOW

The opinion of the Court of Appeals (R. 124-131) is reported at 386 F.2d 929. The decision and order of the National Labor Relations Board (R. 108-123) are reported at 152 NLRB 9.

JURISDICTION

The jurisdictional requisites are adequately set forth in the brief for the National Labor Relations Board. (Br. pp. 1-2).

QUESTION PRESENTED

Where the National Labor Relations Board has found that an employer committed an unfair labor practice by refusing to execute a collective bargaining agreement negotiated on his behalf by a multi-employer group and binding upon him by virtue of the authority vested in such group by him, and has ordered the employer to execute the agreement, is not its additional requirement that the employer perform the agreement by paying certain fringe benefits provided therein beyond its jurisdiction, and an infringement on the policy favoring enforcement of contracts through arbitration?

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) (hereinafter referred to as the "Act") are set forth in the Board's brief at pp. 19-20.

ADDITIONAL STATEMENT

The Board's statement (Br. p. 2, *et seq.*) is generally accurate, but requires some amplification and emendation.

Respondent Strong operates a small individual business as a roofing contractor, strictly limited as to locale and character. (R. 24). His annual purchases of supplies and materials did not exceed $50,000; he had but a handful of employees, most part-time; his wife performed the necessary functions of office manager and the handling of administrative details. (R. 30-32, 36-37).

Respondent's purported termination of the collective bargaining agreement as to him by his letter of August 20, 1963, was in the honest belief that he had the right to do so in accordance with his (erroneous) interpretation of Article X of the Agreement, and the Board so found. (R. 115-16, 24-27, 107).[1] Nothing at all occurred at that time to disabuse him of that belief until the charge herein was filed on June 3, 1964, almost ten months later. To the contrary, his bond deposit required under the contract was returned to him. (R. 116, 14, 27). His application to change his membership in the association from "regular" to "associate" was approved, retroactive to October 1, 1963, and credit given him for the difference in dues. (R. 116, 8, 15-16, 18).[2] Strong's payments of fringe benefits for September and October, 1963, were in accordance with his belief that he could terminate but only on 60 days' notice. (R. 115, 26-27). The only fair inference from the testimony is that Strong believed the Union's request that he sign the agreement was in effect a request to him to return to a union-shop basis which he honestly thought he had legally and effectively terminated. (R. 23, 27-28, 32-33).

There was no charge or evidence of any anti-union bias or animus on Strong's part. On the contrary, relations

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[1] Respondent had previously (January 30, 1962) mailed a somewhat similar termination notice under an analogous provision of the 1960-1963 collective bargaining agreement under the same misapprehension as to its interpretation. (R. 113-14, 25-27).

[2] Associate members are not represented for bargaining purposes by the association, and are not covered by the collective bargaining agreement. (R. 15-16).

were particularly cordial. (R. 32-33). Strong, as a small operator in competition with other non-union shops, was in an economic bind and took what he believed to be the proper legal steps to get out of it. (R. 23, 27). He was wrong in his interpretation but his good faith is not in question.

SUMMARY OF ARGUMENT

The Board is not empowered to interpret or apply the provisions of collective bargaining agreements. *NLRB v. American National Insurance Co.*, 343 U.S. 395, 404. The legislative history and rationale of §301 of the Act plainly indicate Congress' intention to channel disputes over the performance of labor agreements to arbitration or the courts, rather than to the Board. *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 510-13; *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 449-56. The courts, as well as the Board itself, have uniformly recognized this limitation on the Board's jurisdiction.

Although the Board's power to remedy unfair labor practices is admittedly broad, it may not be employed to grant specific enforcement of an agreement, as the Board seeks to do here. Fringe benefits arise solely under an agreement. They do not arise from the condition of employment per se, nor are they statutory rights. The failure to pay fringe benefits cannot support an unfair labor practice charge, but only an action for breach of contract. By the same token, the requirement of payment cannot be treated as part of the remedy for an unrelated unfair labor practice. The appropriate method for the settlement of this contractual dispute is the grievance-

arbitration procedure set out clearly in the agreement itself. The Board must be prevented, as the courts have been, from defeating the intention of the parties to establish suitable means for settling their differences. *United Steelworkers v. Warrior and Gulf Co.*, 363 U.S. 574; *Sinclair Refining Co. v. NLRB*, 306 F.2d 569 (C.A. 5).

The maintenance of this strict congressional limitation on the Board's power does not threaten the enforcement of the Act. The agreement is in full effect and its provisions may be interpreted and applied according "to the usual processes of the law." In the instant case these will provide a completely adequate remedy.

ARGUMENT

In Remedying an Unfair Labor Practice the Board May Not Order Retroactive Payment of Fringe Benefits Arising Solely Under an Agreement When Failure to Pay Such Benefits is Not a Part of the Unfair Labor Practice Found.

This case represents an attempt by the Board to order specific performance of certain of the terms of a collective bargaining agreement, thus bypassing contractually binding grievance and arbitration procedures. The Board claims such right under the guise of its remedial powers to correct an unfair labor practice although the only unfair labor practice found was not at all the failure to perform the terms which the Board has ordered performed. In this attempt we submit it is in violation of congressional limits upon its jurisdiction and of decisions of this Court.

At the outset we point out that under the facts as found by the Board, Respondent was clearly bound as a party to all of the contractual provisions of the 1963-1967 collective bargaining agreement at all times from and after the execution of that agreement by his Trade Association on his behalf on August 15, 1963. As a regular member of the Roofing Contractors' Association of Southern California, Inc., Respondent had delegated to it the full authority, clearly set forth in its bylaws, to negotiate and reach a collective bargaining agreement for him which "shall be binding upon the regular members of this Association separate and collectively." (R. 35, 10, 11, 16). The agreement was completely negotiated, signed and effective as of August 15, 1963. (R. 9, 40 *et seq.*). Under elementary principles of agency and labor law, Respondent and the Union were both bound to all of its terms as of that date, including the elaborate grievance procedure culminating in binding arbitration. (R. 55-60).[3]

[3] Article VII of the Master Labor Agreement between the Roofing Contractors' Association and the local unions sets out a complete grievance-arbitration procedure. It provides for the establishment of a Joint Labor Relations Board, comprised of an equal number of representatives from the union and management sides, which shall in the first instance hear all disputes over contractual terms, and "shall have the power to impose liquidated damages . . . for non-payment of wages and fringes . . . ." The decisions of this Board may be appealed to arbitration "which shall be final and binding upon all the parties to this Agreement." Section M of the Article states — "All grievances, other than jurisdictional disputes, arising out of the interpretation or application of any of the terms or conditions of this Agreement shall be submitted for determination and shall be determined by the procedure set forth in this Article; . . . ." (R. 55, 57, 58, 59).

In its brief the Board itself asserts that Respondent was "bound by any collective bargaining agreement between the Association and the Union" on August 15, 1963 (Br. p. 2) as it well must. Its afterthought *dubitante* expressions (Br. p. 17) are without merit in the light of established legal principles and seem only to indicate the Board's suspicion of the integrity of the courts.

The only unfair labor practice charged and found was a failure "on and after April of 1964" to sign and honor[4] the agreement, which the Board remedied by ordering Respondent to do so. (R. 108, 118, 120; Br. pp. 4-5). The failure to pay fringe benefits was not found to be an unfair labor practice, nor could it have been under these circumstances. It was nothing more nor less than a breach of Respondent's contractual obligations under the collective bargaining agreement remediable through the grievance and arbitration procedures.

Respondent's failure to sign the agreement, unfair labor practice though it may have been, neither added to nor detracted from the right of the Union to receive fringe benefits nor the obligations of Respondent to pay them as

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[4] The word "honor" as used in the Board's decisions and orders has long since been given judicial interpretation; it does not mean "perform."

> "Read in this light, the word 'honor' has the limited role of placing the parties, with reference to the contract, back in the position which they occupied prior to the breach. It does not mean that specific performance was decreed as Hyde contends. Nor is it an adjudication as to the validity of any or all of the contract provisions." *NLRB v. Hyde,* 339 F.2d 568 (C.A. 9) at 572-73.

provided in the agreement already binding upon him before that failure occurred. It was not this unfair labor practice that caused money damage to the Union. It was the refusal of Respondent, for economic reasons and through misinterpretation, to comply with the agreement. The rights and remedies of the Union and the employees to enforce the existing agreement with respect to fringe benefits were exactly the same between August 15, 1963, and April of 1964 as they were thereafter, i.e., to follow the grievance and arbitration procedures set out therein.

Under these circumstances the order of the Board requiring fringe benefits to be paid is clearly an attempt to "remedy injuries arising out of a breach of contract, a task which Congress has not assigned to it." See *Vaca v. Sipes,* 386 U.S. 171, 187. To permit it to do so would not only contravene the Congressional mandate but it would violate sound principles of labor-management relations and the sanctity of the grievance and arbitration procedures, as we shall now show.

The legislative history behind § 301 of the Act clearly indicates Congress' preference for forums other than the Board for the adjudication of contractual disputes. As recounted in *Charles Dowd Box Co. v. Courtney, supra,* the early versions of the bill passed by the Senate in 1947 contained a provision which called for the inclusion of breach of contract among the unfair labor practices subject to the jurisdiction of the Labor Board. S. 1126, 80th Cong., 1st Sess., §§ 8(a)(6) and 8(b)(5). In conference, however, these provisions were dropped and it was decided to make collective bargaining agreements enforceable only in arbitration and the courts because

"once parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of law and not the National Labor Relations Board." H.R.Conf. Rep. No. 510, 80th Cong., 1st Sess. p. 42. This deliberate choice by Congress to exclude the Board from jurisdiction over collective bargaining agreements arose from a recognition of the different characteristics of judicial and administrative decision making. In his article on "Section 301 and the Primary Jurisdiction of the NLRB," 76 Harv.L.Rev. 529, Professor Sovern underlined the importance of this distinction:

> "Since contract rights going beyond the NLRA are involved in a substantial proportion, perhaps the overwhelming majority, of contract actions seeking relief against conduct that also arguably constitutes an unfair labor practice, the best course is to permit courts and arbitrators to decide all such cases. What the Supreme Court said in *Garmon* is also applicable here: 'The nature of the judicial process precludes an *ad hoc* inquiry into the special problems of labor-management relations involved in a particular set of occurrences in order to ascertain the precise nature and degree of federal-state conflict there involved, and more particularly what exact mischief such a conflict would cause. . . . Our task is confined to dealing with classes of situations.' In *Garmon*, this approach led to preemption; in the contract context, for the reasons already suggested, it leads in the opposite direction." (76 Harv.L.Rev. at 557-58).

The Board has no special expertise in the interpretation of contractual terms. Indeed, limited as it is to the effectuation of the Act, the Board is not nearly so flexible as are arbitrators in formulating the type of particular remedies which Congress thought necessary for the disposition of disputes over the terms of labor agreements. See, generally, Dunau, *Contractual Prohibition of Unfair Labor Practices: Jurisdictional Problems*, 57 Colum.L.Rev. 52.

The congressional policy of submitting contractual disputes to arbitration and not to the Board, has often been given great weight by the federal courts. In *NLRB v. American National Insurance Co.*, 343 U.S. 395, the Board had found a violation of § 8(a)(5) of the Act in the employer's continued insistence on the inclusion of a broad management functions clause. The Board's order contained a directive to the employer to refrain from further insistence on this point. The court of appeals refused to enforce, concluding that the employer was not precluded from further bargaining for such a clause. This Court affirmed, stating it to be clear "that the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements." 343 U.S. at 404.

The decisions of the courts of appeals have further emphasized this limitation on the power of the Board. In *United Steelworkers v. American International Aluminum Corp.*, 334 F.2d 147 (C.A. 5), the Union sought to compel arbitration of certain discharges and at the same time filed proceedings before the Board claiming the discharges constituted an unfair labor prac-

tice. The employer refused to go ahead with arbitration during the pendency of the Board proceedings. The district court dismissed the Union's action to compel arbitration, but the court of appeals reversed, pointing out that the two proceedings were separate and distinct, and there could be no overlap between them. Arbitration could not dispose of the claim under the statute, and the Board could not treat the claim under the agreement. "Indeed, so severely is the Board limited to the adjudication of statutory rights that it has no power to adjudicate contractual disputes." 334 F.2d at 152.[5]

The principle enunciated by the Court of Appeals in the instant case is thus squarely in line with the great weight of authority. The encroachment which the Board now seeks to make is out of harmony with the decisions of this Court and would tend to destroy the integrity of the policy favoring the settlement of disputes over labor agreements through "the usual processes of the law."

The decisions of this Court have recognized only two situations in which the Board may pass upon contractual issues. In *National Labor Relations Board v. C & C Plywood Corp.*, 385 U.S. 421, the Court upheld the Board's power to examine a contract for the limited purpose of determining whether it provided the employer a defense against an unfair labor practice charge. The employer had instituted a premium pay plan without

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[5] Citing *Sinclair Refining Co. v. NLRB*, 306 F.2d 569, 576-78 (C.A. 5), in which the Fifth Circuit refused to enforce a Board order as against the contention that it determined issues beyond mere arbitrability. The pages cited contain a discussion of limitations on the Board's power imposed by the preference accorded to contractual remedies, particularly to arbitration.

prior consultation with the Union, relying on a provision in the agreement which arguably permitted him to do so. In the resultant § 8(a)(5) unfair labor practice proceedings, the Board rejected the defense that the Union had ceded to the employer the power to change the wage system unilaterally. This Court reversed the court of appeals' refusal to enforce the Board order. It found that the Board's entry into the area of contract adjudication "went only so far as was necessary to determine that the union did not agree to give up these statutory safeguards." 385 U.S. at 428. But the Court clearly distinguished this threshold determination from any attempt by the Board "to determine the extent of the contractual rights which were given the union by the employer." *Ibid.* In *C & C Plywood*, the Board had "done no more than merely enforce a statutory right which Congress considered necessary to allow labor and management *to get on with the process of reaching*[6] fair terms and conditions of employment. . . ." *Ibid.*[7]

It was precisely this boundary which the Court of Appeals observed in the instant case. The Board's finding that Strong had violated § 8(a)(5) by his refusal to sign the agreement, and its order that he execute it, serve to enforce the Union's statutory right to recognition herein. Such order completely confirms the *status quo*

[6] Emphasis supplied throughout.

[7] A factor which weighed heavily in the Court's decision to uphold the Board's order was the absence in the contract under discussion of any provision for arbitration. Thus, the Court did not feel the Board's order conflicted with the congressional policy favoring arbitration. The contract in the instant case, however, does provide for arbitration (Article VII, R. 55-60), see note 3, *supra*.

ante which the Board contends (Br. p. 11-12) is its duty to establish. But the further order calling for the retroactive payment of fringe benefits is an unwarranted exercise of plenary jurisdiction over the terms of the agreement already existing prior to the commission of the unfair labor practice.

The second exception recognized by this Court to the general policy against permitting the Board to dispose of contractual issues is restricted to cases where there is a precise coincidence of a breach of contract and an unfair labor practice. Thus, in *Smith v. Evening News Association*, 371 U.S. 195, 197, the Court concluded that it is the "authority of the Board to deal with *an unfair labor practice which also violates a collective bargaining contract,*" which "is not displaced by Section 301."

The authority was similarly limited in *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 101, n. 9:

> "It is, of course, true that *conduct which is a violation of the contractual obligation may also be conduct constituting an unfair labor practice*, and what has been said is not to imply that enforcement by a court of a contract obligation affects the jurisdiction of the N.L.R.B. to remedy unfair labor practices, as such."[8]

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[8] In *National Labor Relations Board v. Great Dane Trailers*, 388 U.S. 26, the Court commented (p. 31, note 7) "But when the elements of an unfair labor practice are present in a breach of contract, the injured party is not automatically deprived by Section 301 of his right to proceed before the Board. . . ." See also *Carey v. Westinghouse*, 375 U.S. 261, 268.

Even in this situation, however, the Court is careful to emphasize that the Board retains jurisdiction only to remedy the unfair labor practice, but not to deal with any peripheral contractual issues.[9] See *Local 174, Teamsters v. Lucas Flour Company*, 369 U.S. 95, 101, n. 9 and cases cited therein.

The Board has itself recognized the limitation on its discretion to remedy unfair labor practices. In *In Re Hyde*, 145 NLRB 1252, the Board refused to adopt the Trial Examiner's ruling that the employer, who had wrongfully repudiated an agreement, " 'comply with the provisions of the collective-bargaining agreement,' on the ground that the enforcement of the terms of a collective-bargaining agreement is for the courts rather than the Board." 145 NLRB at 1253. And in *In Re United Telephone Company of the West*, 112 NLRB 779, the Board abstained from adjudicating a dispute concerning

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[9] The order of the Board in the instant case ranges far beyond the narrowly circumscribed jurisdiction established by this Court. In remedying an unfair labor practice which is not in itself a breach of contract, the Board reaches out to enforce a contractual term, the violation of which alone could not under any circumstances support an unfair labor practice charge. The impropriety of its order can be readily demonstrated by the fact that Strong's failure to pay fringe benefits, absent any other violation of the statute, could only be remedied in an arbitration. This absence of jurisdiction in the Board results from a deliberate Congressional policy aimed at settling collective bargaining contract disputes through arbitration. But the Board's order would circumvent this stated policy merely because the breach of contract was accompanied by an unfair labor practice, rather than standing alone. It is hard to see how this juxtaposition serves to bring under the coverage of the Board an action which would clearly not otherwise be included.

overtime schedules, stating that "[t]he Board is not the proper forum for parties seeking to remedy an alleged breach of contract or to obtain specific enforcement of its terms." 112 NLRB at 782.

It is the clear mandate of the Act and the federal labor policy that the appropriate method for the settlement of contractual disputes is to be that selected by the parties,[10] which in the instant case, as in the vast majority of cases, is the grievance-arbitration procedure. That the courts are bound to defer to arbitration whenever it has been provided in the agreement is a proposition long considered crucial to the function of the industrial self government which lies at the core of labor relations law.

In *John Wiley & Sons v. Livingston*, 376 U.S. 543, at 549-50, this Court said:

> "This Court has in the past recognized the central role of arbitration in effectuating national labor policy. Thus, in *Warrior & Gulf Navigation Co.*,

[10] Section 203(d) of the Act, 29 U.S.C. § 173(d), expresses the policy:

> "(d) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement."

This preference for dispute-settlement arbitration does not, as the Board erroneously suggests at p. 13 of its brief, conflict with §10(a) of the National Labor Relations Act, 29 U.S.C. §160(a). That provision merely protects the Board's power to "prevent any person from engaging in any unfair labor practice." The breadth of that power is not here denied. Rather, it is contended that the Board's award goes beyond the necessities of the prevention of unfair labor practices. Arbitration would thus not replace or limit the Board's remedial power, but would begin where that power rightly ends.

supra, at 578, arbitration was described as 'the substitute for industrial strife,' and as 'part and parcel of the collective bargaining process itself.' . . . The preference of national labor policy for arbitration as a substitute for tests of strength between contending forces could be overcome only if other considerations compellingly so demanded."

It is submitted that this policy, as enunciated in the Steelworkers trilogy[11] with regard to the court, applies with equal force to the Board.

The collective bargaining agreement is more than just a contract; it is a code intended to govern all aspects of the relationships between labor and management. *John Wiley & Sons v. Livingston, supra.* At the heart of this system of self government lies the grievance machinery. In administering the system created by the agreement, an arbitrator is called upon to perform functions which are peculiar to grievance procedures.

> "The labor arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law — the practices of the industry and the shop — is equally a part of the collective bargaining agreement although not expressed in it." (*United Steelworkers v. Warrior and Gulf Co.*, 363 U.S. 574, 581-82).

It might be contended that these considerations, which dictate the preference for arbitration over judicial de-

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[11] *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564; *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574; *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593.

cision, may not weigh so heavily as applied to the Board. But this is contrary to the express intention of Congress in rejecting the general expertise of the Board in contract actions and relying rather on the particular expertise of the arbitrator. *Sinclair Refining Co. v. NLRB*, 306 F.2d 569, 576-78 (C.A. 5).

In the instant case, submission of the issue to arbitration will, of course, create a bifurcated action, but such bifurcation is clearly demanded by the prior decisions of this Court. The procedure is the same as that prescribed for a court in dealing with potentially arbitrable disputes:

> "The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. . . .
>
> "The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious. The processing of even frivolous claims may have therapeutic values of which those were not a part of the plant environment may be quite unaware. . ."

"When the judiciary undertakes to determine the merits of a grievance under the guise of interpreting the grievance procedure of collective bargaining agreements, it usurps a function which under that regime is entrusted to the arbitration tribunal." (*United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564, 567-69).

The situation in the instant case is precisely analogous. In agreeing that the Respondent was bound to the agreement, the Board necessarily concluded that the arbitration clause was in effect between the parties. For the further disposition of disputes clearly subject to that clause, such as the provision for the payment of fringe benefits, the Board must defer to arbitration. As Mr. Justice Harlan said in his concurring opinion in *Carey v. Westinghouse Corp.*, 375 U.S. 261, 273, in which the Court ordered the employer to go through with arbitration of a question which was arguably subject to the Board's jurisdiction, "the choice in substance lies between a course which would altogether preclude any attempt at resolving disputes of this kind by arbitration, and one which at worst will expose those concerned to the hazards of duplicative proceedings. . . . As between the two, I think the Court at this early stage of experience rightly chooses the latter."[12]

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[12] The decisions of this Court in *NLRB v. C & C Plywood, supra,* and *NLRB v. Acme Industrial Co.*, 385 U.S. 432, do not touch upon the situation presented by the instant case. As pointed out above, *C & C Plywood* dealt with a dispute over a contract which contained no arbitration clause. Thus, no policy favoring arbitration was offended by permitting the Board to determine the waiver question. On the other hand, *Acme,* in which

With all due respect, we submit that the Board is here attempting to evade the choice made by this Court and the congressional mandate that "once parties have made a collective bargaining contract, the enforcement of that contract should be left to the usual processes of the law." The Board, like the camel, is trying to get its nose under the tent. We believe that such attempt should be frustrated by this Court in the interest of the essential division of jurisdiction between the Board and the process of arbitration.

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the Court upheld the Board's finding of a § 8(a)(5) violation in the employer's refusal to supply data relevant to an arbitrable contract provision, presented a situation in which there was an arbitration clause. But the Court was careful to point out that its decision did not determine the merits of the dispute. 385 U.S. at 438, n. 7. Thus, the policy favoring arbitration was not offended there as well. In the instant case, however, there can be no question that the Board's award disposes completely of an arbitrable contractual dispute. In the only other case in which such a situation has heretofore been presented, the Fifth Circuit refused to enforce a Board order compelling the production of certain data relevant to an arbitrable controversy because the order necessarily implied a conclusion that the Union's interpretation of the agreement was correct and that of the employer was incorrect. *Sinclair Refining Co. v. NLRB*, 306 F.2d 569 (C.A. 5).

CONCLUSION

For the foregoing reasons the judgment of the Court of Appeals refusing to enforce the order of retroactive payment of fringe benefits should be affirmed.

Respectfully submitted,

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August, 1968